

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

CASE NO.: 3:18cv008

MINDEN PICTURES, INC,

Plaintiff,

v.

TOPTENZ, LLC d/b/a TOPTENZ.NET,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff MINDEN PICTURES, INC. by and through undersigned counsel, brings this Complaint against Defendant TOPTENZ, LLC d/b/a TOPTENZ.NET for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff MINDEN PICTURES, INC. (“MPI”), brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute MPI’s original copyrighted works of authorship.

2. Minden Pictures, Inc. is recognized as the premier provider of rights managed wildlife and nature stock photos and feature stories. MPI’s collection covers key aspects of natural history, ecology, biodiversity, and endangered species from all continents including many remote and isolated regions. MPI also features images of human interaction with the natural world highlighting natural science research, conservation, environmental issues, indigenous peoples, and eco travel.

3. Minden Pictures represents the finest images by an award-winning group of natural history photographers including many regular contributors to National Geographic, Inc., MPI also represents image collections by Nature Picture Library, National Geographic, Frank Lane Picture Agency, Nature in Stock, Buiten-beeld, Biosphoto, Birdimagency, Auscape, Hedgehog House, San Diego Zoo, and amana.

4. Defendant TOPTENZ, LLC d/b/a TOPTENZ.NET (“TopTenz”) is an entertainment website featuring articles highlighting the “top ten” of various subjects.

5. MPI alleges that TopTenz, LLC d/b/a TopTenz.net copied MPI’s copyrighted work from the internet in order to advertise, market and promote its business activities. TopTenz committed the violations alleged in connection with TopTenz’s business for purposes of advertising and promoting sales to the public in the course and scope of the TopTenz’ business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Defendant is subject to personal jurisdiction in Virginia.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

10. TopTenz, LLC d/b/a TopTenz.net is a Corporation with its principal place of business at 2600 East Broad Street, Richmond, VA 23223, and can be served by serving its

Registered Agent, United States Corporation Agents, Inc., 1900 Campus Commons Drive, Suite 100, Reston, VA 20190.

THE COPYRIGHTED WORKS AT ISSUE

11. MPI is the owner of five infringed photographs, which are shown below and referred to herein as the “Works”.



00140894.jpg



00443890.jpg (above)

00449256.jpg (below)





00450694.jpg



00620280.jpg

12. MPI registered the Works with the Register of Copyrights as listed in the table below.

Photograph	Registration Date	Registration Number
00140894.jpg	January 9, 2009	VA 1-715-029
00443890.jpg	February 3, 2017	VA 2-054-198
00449256.jpg		Applied
00450694.jpg	February 6, 2017	VA 2-050-154
00620280.jpg	January 23, 2009	VA 1-716-009

The Certificates of Registration are attached hereto as Exhibit 1.

13. At all relevant times MPI was the owner of the copyrighted Works at issue in this case.

INFRINGEMENT BY DEFENDANT

14. TopTenz has never been licensed to use the Works at issue in this action for any purpose.

15. On a date after the Works at issue in this action were created, but prior to the filing of this action, TopTenz copied the Works.

16. TopTenz copied MPI's copyrighted Works without MPI's permission.

17. After TopTenz copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its entertainment website.

18. TopTenz copied and distributed MPI's copyrighted Works in connection with TopTenz's business for purposes of advertising and promoting TopTenz's business, and in the course and scope of advertising and selling products and services.

19. MPI's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

20. TopTenz committed copyright infringement of the Works as evidenced by the documents attached hereto as Exhibit 2.

21. MPI never gave TopTenz permission or authority to copy, distribute or display the Works at issue in this case.

22. MPI notified the TopTenz of the allegations set forth herein on September 1, 2017, September 5, 2017, September 19, 2017, October 19, 2017, and November 10, 2017. To date, TopTenz has failed to respond to Plaintiff's Notices. A copy of the Notices to TopTenz is attached hereto as Exhibit 3.

23. Plaintiff has engaged the undersigned attorneys and has agreed to pay them a reasonable fee.

COUNT I
COPYRIGHT INFRINGEMENT

24. Plaintiff incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. MPI owns valid copyrights in the Works at issue in this case.

26. MPI registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

27. TopTenz copied, displayed, and distributed the Works at issue in this case and made derivatives of the Works without MPI's authorization in violation of 17 U.S.C. § 501.

28. TopTenz performed the acts alleged in the course and scope of its business activities.

29. MPI has been damaged.

30. The harm caused to MPI has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant TopTenz that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501;

b. Defendant be required to pay Plaintiff its actual damages and Defendant's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. §§ 504.

c. Plaintiff be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon; and

d. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: January 3, 2018

Respectfully submitted,

/s/ Jerold I. Schneider

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